

# **Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)**

## **1. Introduction**

*"Persistent hunger in today's world is neither inevitable nor acceptable. Hunger is not a question of fate; it is manmade. It is the result either of inaction, or of negative actions that violate the right to food. It is therefore time to take action."(1)*

For more than a decade, the people of North Korea - one of the most isolated nations on earth - have suffered from famine and acute food shortages. Hundreds of thousands of people have died and many millions more have suffered from chronic malnutrition. The actions of the North Korean government exacerbated the effects of the famine and the subsequent food crisis, denying the existence of the problem for many years, and imposing ever-tighter controls on the population to hide the true extent of the disaster. North Korea remains dependent on food aid to feed its people, yet government policy still prevents the swift and equitable distribution of this aid, while the population is denied the right to freedom of movement, which would enable people to go and search for food.

Human rights are universal, interdependent and indivisible. The rights to be free from hunger and discrimination are as fundamental as the rights to life and security of person. Violations of the right to food may in turn lead to other human rights violations. Indeed "the human right to adequate food is of crucial importance for the enjoyment of all rights"(2), as noted by the United Nations Committee on Economic, Social and Cultural Rights. In North Korea, the interdependency of rights, and the linkages between violations of these rights has been starkly illustrated during the famine and the ongoing food crisis. People who have sought desperately to assert their right to food - by moving around the country to search for it, by crossing the border into China, by eating what they find - have then been subjected to violations of other rights, as the North Korean authorities arrest, detain and in some cases even reportedly torture and execute them.

In this report Amnesty International highlights human rights violations in North Korea during the famine and food crisis. The report details violations of the right to food, other human rights violations in the context of the famine and food crisis and the role and responsibility of the North Korean authorities and the international community. It also offers detailed recommendations which would, if implemented, bring about immediate and longer term improvements in the human rights situation in North Korea, and alleviate the suffering of the North Korean people.

### **1.1 Note on information gathering and sources**

Amnesty International and other independent human rights monitors do not have direct access to North Korea. Nor does the organization have direct access to the border regions of China where North Koreans have fled to in pursuit of food.

Suppression of freedom of expression, association, information and movement in North Korea makes investigation of the human rights situation on the ground extremely problematic. Detailed information is very difficult to obtain and verify.

This report is based on extensive research, and draws from: testimonies of North Koreans, reports and interviews with inter-governmental organizations, NGOs, academics and other experts who have access to or are involved on issues relating to human rights in North Korea.

To protect the identity of North Koreans who have provided testimonies, Amnesty International has not used their real names or other identifiers in the report.

## **1.2 Political context**

North Korea has existed in self-imposed isolation for many decades. The country is nominally communist, but also influenced by its own Juche (self-reliance) ideology. Its leader Kim Jong-il is the son of the founder of North Korea Kim Il-sung, who established the country's institutions and pattern of highly repressive government, in which the rights to freedom of expression, association and movement have never been upheld. Political opposition is not permitted, and anyone expressing opinions contrary to the position of the ruling Korean Workers' Party is liable to severe punishment. There are no domestic non-governmental organizations or functioning civil society groups. Internationally, the country is regarded with suspicion, particularly because of its nuclear program, and lack of engagement with international institutions. In the last five years, the North Korean government has allowed a growing number of countries to establish diplomatic ties, but the activities of the international community - even in the area of aid provision and distribution - remain strictly limited. This has led to a reduction in the amount of food aid pledged to the country, although the need remains enormous.

## **2. North Korea's International Obligations to Respect, Protect and Fulfil Rights**

North Korea has been a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) since December 1981, the International Covenant on Civil and Political Rights (ICCPR) since December 1981, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since March 2001 and the Convention on the Rights of the Child (CRC) since October 1990. As a state party to these international human rights treaties, the North Korean government is under an obligation to respect, protect and fulfil the rights guaranteed by these treaties. (3)

Economic, social and cultural rights are not guaranteed in North Korea's constitution and do not form part of the country's domestic law. Access to state structures, including a legal system which upholds international standards, is fundamental to protecting and fulfilling the full range of human rights set out in these treaties. Little is known about the functioning of the individual complaints system under the 'Law on Complaints and Petitions', which the North Korean government asserts is a means of

enforcing and upholding individual human rights. In November 2003, the Committee on Economic, Social and Cultural Rights expressed its concern "about the constitutional and other legislative provisions of its Constitution, that seriously endanger the impartiality and independence of the judiciary and have an adverse impact on the protection of all human rights guaranteed under the Covenant."(4)

## **2.1 The right to food: definitions, obligations of states parties**

The right to food is enshrined in the Universal Declaration of Human Rights and Article 11 of the ICESCR as well as in numerous other international and regional standards and in international humanitarian law. States who are parties to the ICESCR are under an obligation to respect, protect, and fulfil the right to food. The ICESCR, which has been ratified by 148 states, deals with the right to food more comprehensively than any other treaty. The obligations of state parties to the ICESCR with respect to the right to food are set out in part in Article 11.1 which states that:

*"(t)he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."*

At the first UN World Food Summit in November 1996, states called upon the UN High Commissioner for Human Rights to better define rights related to food under Article 11 of ICESCR. Three consultations were held between 1997 and 2001 to clarify the meaning of the right to food and its implementation. They involved specialized UN agencies and treaty bodies, governments, NGOs and the UN Commission on Human Rights Special Rapporteur on the right to food. Reporting to the second World Food Summit held in June 2002, the UN High Commissioner for Human Rights clarified that "states' primary obligations are to respect and protect the right to food and to fulfil/facilitate its enjoyment by ensuring adequate conditions for that purpose"(5)

The Committee on Economic, Social and Cultural Rights has also clarified the obligations of states parties under Article 11 of the ICESCR in its General Comment No. 12.(6) This comment has been welcomed by the Commission on Human Rights in its resolution 2000/10 on the right to food (paragraph 8) and endorsed as "the existing authoritative interpretation of the right to food" by the UN Special Rapporteur on the right to food. The Special Rapporteur believes that the new voluntary guidelines being drawn up on the right to food under the auspices of the Food and Agricultural Organization of the United Nations should be based upon the comment.(7)

Paragraph 6 of General Comment 12 sets out a broader definition of the right to adequate food:

*"The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all*

*times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters."*

Paragraph 14 outlines states parties core obligation to:

*"ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger."*

Paragraph 15 defines the different types of obligations of states parties:

*"(t)he right to adequate food, like any other human right, imposes three types or levels of obligations on States Parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide."(8)*

Based on these definitions, it appears that the North Korean government has not been fulfilling its obligations under the ICESCR. Article 11, paragraph 2 of the ICESCR recognizes that active measures may need to be taken by states to guarantee "the fundamental right of everyone to be free from hunger".

It is also important to note that as a state party to the ICESCR, North Korea is within its rights to seek international cooperation to improve its food situation. Article 11(2) of the ICESCR states that:

*"The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes which are needed:*

*(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*

*(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."*

Paragraph 36 of General Comment 12 emphasizes the international obligations of states parties by stating that:

*"In the spirit of Article 56 of the Charter of the United Nations, the specific provisions contained in Articles 11, 2.1 and 2.3 of the Covenant and the Rome Declaration of the World Food Summit, States Parties should recognize the essential role of international cooperation and comply with their commitment*

*to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, States Parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. "Paragraph 37 further clarifies international obligations of states parties by underlining that,*

*"States Parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure." (9)*

Article 27 (1) of the CRC recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 27 (3) obliges states parties, in case of need, to "provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing." Moreover, Article 24 (2)(c) requires states to take appropriate measures to combat diseases and malnutrition, including through the provision of nutritious food and drinking water.

The CEDAW prohibits discrimination against women, including in the field of employment (Article 11); in the field of health care (Article 12); and in other areas of economic and social life (Article 13). It specifies that, "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas" (Article 14).

Article 6 of the ICCPR guarantees the right to life. In its first General Comment on Article 6, the UN Human Rights Committee stressed the need to think of this right broadly. states parties are required to take positive steps "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics."(10) (See below, for more discussion on the right to life.)

### **3: Background: Environmental, Economic, and Political factors behind the Famine and Food Crisis**

The food shortages in North Korea have many causes including:

- constraints within the country's economic system
- the collapse of strategic economic ties on which the economy depended following the break-up of the Soviet Union in 1991, and the decline in trade with China following its normalization of relations with South Korea
- natural disasters

#### **3.1 Constraints within North Korea's economic system**

The food shortages in North Korea are partly a product of natural constraints and structural weaknesses. (11) Limited arable land, relatively poor soil fertility and harsh climatic conditions restrict the capacity of the domestic agricultural sector to provide food security for the population. North Korean agriculture has also been built on the exploitation of land unsuited for agriculture, and energy-intensive forms of

cultivation. Electricity was used extensively to power water pumps for irrigation and drainage.(12) Tractors, and chemical fertilizers, particularly petroleum-based urea and ammonium sulphate, were heavily utilized.(13)

The impact of a fall in concessionary imports of fuel, fertilizers, technology and other strategic industrial inputs from the former Soviet Union and China was exacerbated by severe damage to domestic coal and hydroelectric power during floods in 1995 and 1996, a drought in 1996, and then a *tsunami* in 1997. This resulted in an energy crisis, and by 2001, "all forms of modern energy supplies (were) down by more than 50 percent compared with 1990, affecting all sectors of the economy, and especially transportation, industry and agriculture."(14)

Since 1995, fertilizer production has dropped to below 100,000 tons per year, and is now less than 12 percent of pre-1990 levels. By 2000 agriculture operated at 20 to 30 percent of normal levels of soil nutrient inputs. This shortfall was said to be the largest single contributor to reduced soil yields and to food shortage.(15)

The lack of fertilizers, fuels, and electricity has thus had a very serious impact on soil fertility, water pumping, field preparations, and the planting, harvesting, processing and distribution of crops. Moreover, fuel shortages have led to an increased use of wood and crop wastes as substitutes, placing rural ecosystems under severe stress.(16)

### **3.2 The collapse of strategic economic ties with the former Soviet Union**

The roots of the famine lay in a significant reduction in trade with the former Soviet Union and China in the early 1990s, which meant sharp cuts in heavily subsidised food, crude oil and equipment supplies to North Korea. North Korea's energy infrastructure - thermal power plants, coal mines and hydroelectric plants - was built between the 1950s and the 1980s with significant technical and financial help from the Soviets and relied on imported oil and coal. By 1993, Russian exports to North Korea were less than 10 percent of 1987-1990 levels.(17)

### **3.3 Natural disasters**

Natural disasters such as floods in the mid-1990s and droughts in 2000 and 2001 contributed to the collapse of the industrialised agriculture system in North Korea.

Heavy rains between June and August 1995 resulted in devastating floods. The North Korean government estimated that 5.4 million people were displaced, 330,000 hectares of agricultural land destroyed and 1.9 million tons of grain lost. There were more floods in 1996, followed by the worst drought in decades. There was also a drought in 2000, and in 2001 what was reportedly the largest spring drought in recorded history badly affected winter/spring wheat, barley and potato crops. It also led to an acute loss of soil moisture, depletion of reservoirs and crippling of irrigation systems.(18)

Harvests in 2002 and 2003 improved, but still left cereal deficits of 1.47 million tons and 1.084 million tons respectively according to FAO/WFP estimates.(19) Domestic agricultural production was not expected to fulfil minimum food needs and North

Korea was expected "to depend on substantial external food assistance for the next year as its capacity to import commercially is highly constrained."(20)

#### **4. Extent of the Famine and Subsequent Food Crisis:**

##### **4.1 Definitions**

The World Food Programme (WFP) uses the following broad definitions of "Famine" and "Food Crisis":

Famine is the incidence of serious food shortage across a country that dangerously affects the nutrition levels, health and livelihood of many people, to the extent that there is a large incidence of acute malnutrition and many people have died of hunger.

Food crisis is the incidence of serious food shortages across a country, but where hunger deaths are rare, and the incidence of acute malnutrition is less than in a state of famine, but there is a significant incidence of chronic malnutrition and the country is still unable to achieve food self reliance and is significantly dependent on international aid.

According to the WFP, North Korea experienced famine from the time of its access to the country in 1995 until 1998. It is however acknowledged that the remote north-eastern provinces experienced famine earlier, from at least 1994. Since 1998 the WFP have referred to the food shortage situation in North Korea as a food crisis.

The Public Distribution System (PDS) in North Korea comprises a very extensive system through which subsidised rations are distributed on a gram-per-day per person basis, according to occupation. It has never covered workers on cooperative farms, who depend on their own production. Access to state food supplies - including domestic agricultural production, imports and aid - is determined by status, with priority given to government and ruling party officials, important military units and urban populations, in particular residents of the capital Pyongyang.(21) Before the famine, the PDS reportedly supplied over 700 grams per person per day to over 60 percent of the population; but the famine resulted in a collapse of domestic food supplies and the PDS could reportedly only supply 6 percent of the population by 1997. (22) Daily rations supplied by the PDS have increased in subsequent years to 319 grams of food by September 2003(23), thanks to food aid complementing improved agricultural production. From early 2000 PDS rations were estimated to be providing around one third of a household's cereal needs, with the remainder coming from other sources, including direct province to province transfers, arrangements between cooperative farms and industries, and farmers markets.

##### **4.2 The chronology and extent of the famine in North Korea**

Signs of serious food shortages became evident to the outside world in 1991, when the North Korean government launched a "let's eat two meals a day" campaign. In 1992, PDS rations were cut by ten percent, and thereafter distribution became irregular, particularly to the north-east. PDS distributions reportedly stopped nationwide during the summer of 1994, except on two to three national holidays.(24)

During 1994, when food shortages started to affect the functioning of the PDS, the North Korean government reportedly stopped sending food shipments to the remote north-eastern provinces of North and South Hamgyong and Ryangang. These mountainous, traditionally food-deprived provinces were highly dependent on the PDS system and famine appears to have started in these regions in 1994, two years before it hit the rice-growing western provinces.(25) The failure of the already poor domestic agricultural production (see table 1) after severe floods in 1995 and 1996, followed by severe drought, resulted in a drastic reduction to food supplies to the PDS. By 1997 the PDS was reportedly only able to supply 6 percent of the population.(26)

In August 1997, UNICEF expressed concern that the number of children suffering from the effects of food shortages has risen dramatically in recent months, with some 80,000 children severely malnourished and in imminent peril of succumbing to starvation or disease. UNICEF and other UN agencies also estimated that about 38 per cent or 800,000 children under five were suffering from malnutrition to a serious, but lesser degree. The worst suffering was "among children who have lost or have been separated from their parents. Up to half the children in some orphanages are severely malnourished."(27)

The PDS was reportedly unable to supply any food at all in the 1998 'lean season' (April to August) or from March to June 1999 (see table 2). In January 1998 there was an official announcement that individual families were henceforth responsible for feeding themselves rather than relying on the PDS. Between March and September 1998, in order to survive, people were forced to eat alternative foods that had very little nutritional value such as edible roots, cabbage and corn stalks and grasses. Grass finely ground and mixed with some cereal and an enzyme then cooked as noodles or cake was also eaten. The WFP/FAO feared that these alternative foods may, in fact, have exacerbated existing health problems, such as diarrhoea in children.(28)

Reliable figures on North Korea are difficult to obtain, given the lack of access and barriers to information gathering. Estimates of the number of deaths that resulted from the 1990s famine vary widely, ranging from 220,000 to 3.5 million. Some sources claim the famine destroyed between 12 and 15 percent of the total population.(29) Economist Marcus Noland recently estimated that the famine resulted in the deaths of between 600,000 to 1 million people, out of a pre-famine population of approximately 22 million (between 2.7 and 4.5 percent of the total population).(30) However the "social damage was much higher if one considers the fall-off in the fertility curve caused by famine."(31)

#### **4.3 A Continuing Food Crisis**

The WFP has characterized the situation in North Korea since 1998 as a 'food crisis' and North Korea is a long way from reducing its dependence on food aid. According to the WFP, 6.5 million North Koreans (a third of the population) - mainly women and children - will require food assistance for the calendar year 2004. More than four out of every 10 children in North Korea suffer from chronic malnutrition. Women have been particularly affected by the famine and food crisis. In the 2002 Nutrition Assessment of the DPRK, a third of mothers who were surveyed were found to be malnourished and anaemic.(32)



With moderate increases in the 2003 autumn harvests, the WFP estimates an overall cereals gap for the period November 2003 to October 2004 of 944,000 tonnes and has launched an appeal seeking 484,000 tonnes of food aid (400,000 tonnes in cereals).(33)

**Table 1: 1990s Annual Grain Production**

<i>Year</i>	<i>Production (t)</i>
1990	9 100 000
1994	7 083 000
1995	3 499 000
1996	2 502 000
1997	2 685 000
1998	3 202 000
1999	4 281 000
2000	3 262 000

Source: Table 7, p. 22, North Korean Government 2nd Periodic Report to CESCR, 2002

**Table 2: Supply of cereals available from domestic sources by the PDS system (grams per day) (34)**

<i>Period</i>	<i>Grams per day</i>	<i>Grams per day during lean season</i>
1996	200	
1996 (Nov) - 1997 (Oct)	353	(July - Sept) 128
1997 (Nov - Dec)	300	
1998 (Jan)	300	(April - Aug) no distribution of main cereals
1998 (Feb)	200	
1998 (March)	100	
1998 (Nov) - 1999 (Sept)	350	(Mar - June) very little supply (April) no supply
1999 (Oct)	320	
1999 (Nov) - 2000 (Jan)	300	
2000 (Feb)	250	(Mar - Apr) 200 (May - Jun) 150
2000 (Nov)	250	
2000 (Nov) - 2001 (June)	215	

2001 (Nov) - 2002 (Oct)	270	
2003 (Sep)	319	

#### **4.4 Economic restructuring and agriculture, post-famine**

The failure of the PDS to provide adequate food supplies to North Koreans was shown by the emergence of illegal farmers or consumers markets, with 300 in place by the late 1990s. These markets provided some 70-80 percent of food and other daily necessities to local and urban populations.(35) In June 2003, in a significant market reform, the North Korean government officially recognized these farmers markets, which it allegedly sees as a temporary emergency measure, rather than a permanent solution to its problems. It appears that there is a growth in the "leakage of state-produced goods from the state distribution system into the informal markets, asset stripped and other forms of stealing from state enterprises, and selling of surplus production by farmers to the market rather than to the state."(36) Prices in this market are set by the market and not the state. In 2003 the prices of rice and maize were reportedly 3 to 3.5 times as high as the PDS prices and about double the 2002 market levels, indicating a steep erosion of the already low purchasing power."(37) These high prices mean many poor North Koreans, especially those in urban areas, find that after paying for the basic PDS ration and daily non-food necessities, it is almost impossible to buy enough food.(38)

On 1 July 2002, economic reforms were announced which envisaged an average 20-fold wage increase for workers and an end to heavily subsidized rent. By ending state subsidies on some staple foods, including rice, the reforms also effectively increased their price by some 400 percent. Furthermore the salary increases promised by the government in July, in order to cushion the impact of higher prices have not arrived. There were reports that coal miners who should have received 2,500 won per month had only been paid 800 won, and that their wages were stopped in October 2002. Many factories that were expected to pay their own way under the July 2002 reforms have reportedly shut down, leaving thousands of North Koreans with no means to buy food.(39) This concern is also noted by the October 2003 FAO/WFP report, which quoted government officials and beneficiary families as stating that many factories and counties are only able to pay 50 to 80 percent of regular salaries. The study concludes that more PDS dependent people have become vulnerable; especially as households have less cash available to purchase foods for the special dietary needs of pregnant and nursing women and young children.(40)

### **5. Human Rights Abuses which Contributed to the Famine and Food Crisis**

#### **5.1 Discrimination and unequal access to food**

The impact of food shortages on the North Korean population is uneven. The urban population, with the exception of residents of the capital city Pyongyang, are reportedly more vulnerable and dependent on the PDS than rural dwellers. In 2002-2003, an average urban family spent between 75 and 85 percent of their income on food, including purchases from the PDS and farmers markets. By contrast, state

farmers were spending only a third of their incomes on food. These disparities are worrying as North Korea does not appear to have social safety net mechanisms to protect the vulnerable sections of society such as the elderly.(41)

Remote regions, including the north-eastern provinces of North and South Hamgyong and Kangwon which have always suffered from food deficits because of the mountainous terrain and lack of agricultural land, have been most dependent on the PDS and were worst hit in the famine. However, in 1994, when the food shortages became serious, the authorities reportedly stopped PDS food supplies to these very provinces, at the same time as residents' purchasing power was decimated by the collapse of local industries.(42)

Many North Koreans are victimized because of their class and social status. Article 65 of the revised 1998 North Korean Constitution recognizes citizens' rights to equality. However the government continues to use "the three class labels - 'core', 'wavering', and 'hostile'(43) to prioritize access to education, jobs, residence permits, and entitlement to items distributed through the PDS.(44) Commentators assert that "the policy of class distinction resulted in the institutionalization of inequalities, which presently persist in North Korea and have an impact on the enjoyment of economic and social rights."(45) Testimony collected by Amnesty International is consistent with this analysis:

*According to Kim, "my brother, sisters and I could not go to university; they could not study beyond high school because of our family background. My grandfather, father (who had studied in Japan) and uncles (who had studied in South Korea) were detained in political prison and disappeared. So far I have no idea where they are, what happened to them. However, their 'political crimes' made me and my family lower in society. My father's details were recorded in the family Identity Document. Given my lower social status, I could not marry a government official or a military officer. My social status meant that I did not have the freedom to travel. The lack of social status, lack of education, lack of freedom of movement meant that when the PDS could not deliver food, we had no options but to go to China to look for food.(46)*

A quarter of the population reportedly still belong to the 'hostile class' and comprise people suspected of opposing the government or whose family members have been imprisoned. They also include the so-called 'impure elements' such as prisoners of war from South Korea who were reportedly relocated to remote mountainous areas in provinces such as North Hamgyong in the period 1953 to 1960, immediately after the Korean War. This group's institutionalized lower status, their enforced geographical location and restrictions on movement all inhibit their access to food.

Women have also suffered because of the social roles ascribed to them. In North Korea, women "are expected to perform a highly gendered domestic role that always includes cleaning, cooking and physically demanding chores. These gendered roles are not intrinsically or necessarily sexually exploitative but, should abuse take place, these women have no legal protection or any way in which they can seek redress."(47) Women are generally responsible for finding food for their families, and in times of scarcity often have the last call on food within a household. Many have been forced to roam the countryside in search of food, medicine and other daily necessities. A large proportion of those crossing the border into China for these purposes are women.

In its 2003 concluding observations on North Korea, the Committee on Economic, Social and Cultural Rights expressed its concern about the:

*"persistence of traditional attitudes and practices prevailing...with regard to women that negatively affect their enjoyment of economic, social and cultural rights. The Committee is concerned about the lack of domestic legislation on non-discrimination against women and about the persistence of de facto inequality..."(48)*

By continuing discriminatory policies, and failing to legislate and take action against entrenched inequalities, the North Korean government is not fulfilling its obligations under international law, in particular Article 2.1 of the ICCPR and Article 2.2 of the ICESCR.(49)

## **5.2 Restrictions on freedom of movement**

The North Korean famine and food crisis have been largely invisible because of political controls, including restrictions on the movement of both North Koreans and staff of international humanitarian agencies and the near-total suppression of freedom of expression, information and association. North Korean sensitivity about revealing the worst cases has also played a part. The challenging physical terrain, strict governmental controls over travel, the lack of a transport infrastructure, fuel shortages and flooding have all restricted the movement of people within the country in search of food, especially those weakened by hunger. The result has been what aid workers called a "silent famine".(50)

The North Korean government operates a policy of compulsory designation of place of employment and residence. Ordinary citizens are not allowed to travel freely inside North Korea without permission. The restrictions on freedom of movement for North Korean citizens were clarified by the government in its second periodic report under the ICCPR submitted to the Human Rights Committee in May 2000. This stated that

*"citizens are free to travel to any place of the country on official or personal business subject to the Regulation of Travel. By article 4 of the Regulation the area along the Military Demarcation Line, military base, district of munitions industry and the districts associated with State security are travel restrictive. By article 6 of the Regulation the citizens who want to travel are issued with traveller's certificate."(51)*

Ordinary North Korean citizens have to apply for a travel certificate from the local government office. There are different permits for different journeys. For example, travel to a special administration section requires a particular certificate. Travel to an area bordering China or South Korea requires exceptional permission requiring many more approvals. The local office presents the documents to the border city office which provides a number. The application process takes, in general, 15 days. Acceptable reasons for travel include visiting relatives, for which permission is rarely granted, and the marriage or funeral of close relatives, for which permission is easier to obtain. To attend a funeral, documents have to be provided about the person's death.

According to Oh who left North Korea in late 2000, *"One could travel to Pyongyang and other parts, except border areas near China or Free Trade Zones, by paying bribes to authorities. It was not easy as I had to travel frequently between the city where my father worked and where my family lived to get money for my mother's treatment; she was suffering from cancer. By law, I needed permission to travel; but it was difficult to get travel permits. So I didn't get a travel permit, and when travelling without permission, I evaded the inspectors by hiding in the toilet or stairs or by bribing them."*(52)

The inconvenience caused by travel without permission is emphasized by Kim: *"Ordinary people cannot travel freely; they need certificates and its non-possession would result in fines or in these travellers being asked to get off buses or trains. Police checks were conducted at checkpoints for buses."*(53)

This permit system "had kept most people in their home villages most of their lives... [as] people did not receive their food ration unless they were in their home village. As the public distribution system collapsed, these regulations became far less effective at controlling population movements as people no longer relied on the state for food."(54) Reinforcing the system, on 27 September 1997, Chairman Kim Jong-il reportedly issued orders to all county administrators in each of the 211 counties(55) to set up facilities, known as "927 camps" to forcibly confine those who were caught outside their village or city without a travel permit including those found illegally foraging for food.

In some areas defying the regulations and risking detention reportedly became critical for survival. A member of the ruling Korean Workers' Party who escaped in March 1999 from North Hamkyong province to China was quoted as stating that "people who defied internal travel restrictions to go foraging survived, while loyal party members stayed put and died."(56)

The restrictions on freedom of movement also appear to have worsened the impact of the famine and food crisis by increasing the break-up of families. In the second half of the 1990s hundreds of children were left to fend for themselves on the streets because their parents had died or left home in search of food. These children became known as *kkotjebi* (literally, 'flower swallows').

### **5.3 Undue restrictions on relief agencies**

General Comment 12(15), issued by the Committee on Economic, Social and Cultural Rights, elaborates on states' obligations to provide access to adequate food:

*"The obligation to respect existing access to adequate food requires States Parties not to take any measures that result in preventing such access... the obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have*

*the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters."*

The Committee also considers "a State Party in which any significant number of individuals is deprived of essential foodstuffs...is, prima facie, failing to discharge its obligations under the Covenant". The Committee acknowledges the need to take account of resource constraints within the country concerned, but maintains "in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations".(57) Furthermore, the Committee reiterates that the drafters of the ICESCR intended a state's maximum available resources "to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance".(58)

The North Korean government reportedly did not seek any assistance from the international community until June 1995.

In General Comment 12(38), in reference to the responsibilities of states and international organizations, the Committee stresses: "states have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency". Furthermore: "priority in food aid should be given to the most vulnerable populations". This is reinforced in paragraph 39: "such aid should be based on the needs of the intended beneficiaries".

The continued restrictions on access for independent monitors, food donors, inter-governmental organizations and NGOs impede efforts to assess needs and fulfil these obligations. They appear to be playing a significant role in the continuing food shortages. About 20 percent of North Korea's land-mass, containing some 13 percent of its population, is not accessible to international humanitarian agencies. In 2003 NGOs complained that the government had "placed real limits on where and when NGO representatives could travel, what type of activities they could pursue, and with whom they could interact...NGO representatives quickly became frustrated as DPRK officials blocked some [of] the most common monitoring devices, including morbidity tracking, nutritional surveys, market surveys, and price surveys..."(59)

Humanitarian NGOs such as *Médicins Sans Frontières* (MSF),(60) Oxfam,(61) *Action Contra La Faim* (ACF), the Cooperative for Assistance and Relief Everywhere, Inc. (CARE),(62) the U.S. Private Voluntary Organization Consortium (PVOC) and *Médicins Du Monde* (MDM) have withdrawn from North Korea, citing inadequate access and their consequent inability to account for the eventual use of their aid supplies. MSF stated that restrictions on access had made it impossible to deliver aid in a "principled and effective" manner. It called on donor governments to review their aid policies towards North Korea, to exact greater accountability and to ensure that agencies were able to assess needs impartially and have direct access to the population. Several sources claim that international aid has been distributed by the North Korean authorities to those who are economically active and loyal to the state, while some of the most vulnerable groups have been neglected.

Other NGOs, such as Caritas International(63) and German Agro Aid, remain engaged in humanitarian aid work in North Korea. They believe that improvements in access and monitoring justify their continued involvement. Most of the NGOs that have remained have observed slow and fitful improvements. Despite concerns about access, the WFP, the Food and Agricultural Organization of the United Nations (FAO) and the United Nations Children's Fund (UNICEF) have all chosen to continue working in North Korea.

Most of the food supplied by the WFP, the biggest humanitarian organization present in North Korea, is distributed through the PDS. Food supplied by Caritas which is targeted toward pregnant and nursing women is also distributed through the PDS. Some critics point out that the North Korean officials' insistence that food aid be distributed through the PDS "provides a vehicle for control over distribution of the resources provided by the international community, reinforcing the existing institutional, regional, social biases of the North Korean system."(64)

The use of the PDS for distribution is controversial but it does have a broad reach and the NGOs and humanitarian agencies which have continued to work in North Korea apparently believe that over time they have managed to achieve an acceptable level of monitoring. The WFP states with some certainty that food aid is delivered to target institutions, especially those reaching vulnerable sections of society such as schools and paediatric hospitals. (65)

Monitoring of aid distribution has been problematic. Visits require prior permission from the North Korean government. WFP informed Amnesty International that,

*"Intended visits are advised to Government about one week in advance. On the day of the visit the WFP Monitoring Team, consisting of an International Officer, Korean Officer and Driver, proceed to the county where they meet with county level FDRC [Flood Damage Rehabilitation Committee] officials.... So while the county is known in advance, the actual monitoring sites are determined jointly by WFP and county officials on the day of the visit. WFP staff are dependent on the seconded DPRK Government staff for interpretation. We have yet to recruit a Korean speaker for the operation."*  
(66)

The WFP has expressed concern that the restrictions on monitoring may affect donors' confidence, with serious risks for future funding of the programme. It remains concerned that:

- "WFP has no information about the food situation of people living in the non-accessible counties, thus there is a concern that some very vulnerable people are left without assistance;
- the Government still has not provided a comprehensive list of all institutions that benefit from WFP's assistance, despite repeated requests;
- WFP staff are not allowed to select interviewees at random;
- WFP has recently been granted access to a consumers market in Pyongyang but does not have access to most consumer or state shops, which is indispensable to obtain complete information for its household food economy analyses."(67)

#### 5.4 Suppression of freedom of expression and association

North Koreans suffer near total suppression of their rights to freedom of expression, association and information. There is no free press in North Korea. News stories in the official radio and television broadcasts are heavily censored. According to Nobel Prize winning Indian economist Amartya Sen, "uncensored and active news reporting helps to prevent famines."(68)

The domestic North Korean press has rarely reported on the specifics of the famine and subsequent food crisis in North Korea. Testimonies indicate that North Koreans who own radios or television sets are often monitored to ensure that they do not listen to South Korean or Chinese radio broadcasts or see "illegal" foreign television programs. Foreign journalists continue to face severe restrictions of access within North Korea. Foreign journalists, who have visited North Korea, have told Amnesty International that they were accompanied by 'official minders' throughout their visit and were not allowed to directly interview ordinary North Korean citizens. They were discouraged from taking their own Korean interpreters; only official interpreters are allowed to accompany them. There are no independent non-governmental organizations scrutinizing government performance or representing vulnerable sections of the population most affected by the famine and subsequent food crisis.

All these factors have led to a lack of credible information for North Korean citizens, especially information related to the famine and food crisis; North Koreans have little option but to rely on information by word of mouth or from citizen groups known as *inminbans*. Lack of credible information has been a significant factor in the varying estimates of famine and food crisis deaths. It undermines a timely and appropriate response to crises. This is particularly important in precarious situations where delay and misdirection of resources may cost lives. It is a factor leading to increasing donor fatigue and thus contributes to the continuation of the current food crisis.

Access to radio, television and other media is strictly controlled. According to Lee, *"There were three channels: the Chosun Central TV Channel; Education and Culture Channel and Mansudae Broadcasting Channel. To have a TV and radio, one had to register it with the authorities. The authorities came and checked if one had the right channel. The guards kept an eye out for those who owned radios or TVs or if they listened to outside broadcasts. People living in my town near China heard news from travellers; but those not living near the border had no idea of the outside world. The TV, radio and newspapers did not write about the public executions or about the outside world."*(69)

According to Yoo, access to information was strictly enforced in Pyongyang as well. *"If one wanted to own a radio, then s/he had to register with the SSA. The radio sets were already tuned to North Korean stations. My father, who had a radio, was reported to authorities for occasionally tuning into and listening to South Korean and Chinese broadcasts. He was summoned by authorities and questioned by the police. The control on media was such that there was no way of knowing what was happening in the world; I was under the impression that Seoul was full of beggars in the street."*(70)



Cho echoed the restricted nature of information for ordinary North Koreans. She said: *"my family had a TV through which we received only NK broadcasts. We never heard news from outside. Only high party officials got newspapers. Our source of information was during the weekly seminar at the inminban when we got news and information of the outside world."*(71)

The UN Human Rights Committee in July 2001 expressed concern "that various provisions of the Press Law, and their frequent invocation, are difficult to reconcile with the provisions of article 19 of the Covenant... that the notion of 'threat to the state security' may be used in such ways as to restrict freedom of expression... that the permanent presence in the Democratic People's Republic of Korea of foreign media representatives is confined to journalists from three countries, and foreign newspapers and publications are not readily available to the public at large." Moreover the Committee recommended that the North Korean government "should specify the reasons that have led to the prohibition of certain publications and should refrain from measures that restrict the availability of foreign newspapers to the public." It further requested the North Korean government "to relax restrictions on the travel abroad by Democratic People's Republic of Korea journalists and to avoid any use of the notion of 'threat to the state security' that would repress freedom of expression, contrary to article 19."(72)

## **6. Beyond the Right to Food: Increased Human Rights Violations as a Consequence of the Famine and Food Crisis**

### **6.1 Increased human rights violations in response to the famine and food crisis**

AI has long been concerned about systemic human rights violations by the North Korean government, including reports of torture, public executions and the imposition of the death penalty for political reasons. There have long been reports of an extensive system of prison camps where conditions fall short of minimum international standards and where forced labour is commonplace. Restrictions on the rights to freedom of thought, conscience, religion, opinion and expression, peaceful assembly and association and on access to information remain, while the right to freedom of movement is severely curtailed. Amnesty International believes that a wider spectrum of the population, including women and children, have been affected by human rights violations as a result of the famine and food crisis. In particular, as more and more people sought to move - both within the country and across the border - in order to find food, so they became vulnerable to violations which in the past may not have affected them.

### **6.2 The right to food and the right to life**

The right to life is enshrined in Article 6 of the ICCPR which states that, "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." States have an obligation to protect the right to life, which is the foundation for the enjoyment of all other rights. This right may not be infringed even during a time of conflict or public emergency. Protecting the right to life includes taking positive action against threats to life such as malnutrition and disease.

Although estimates of the number of deaths due to food shortages vary, it is universally acknowledged that North Korea is experiencing a humanitarian disaster. The UN Special Rapporteur on the right to food has listed North Korea as one of "(t)he countries worst affected by extreme hunger..."(73)

*"Vulnerable groups in the DPRK (North Korea) continue to suffer the cumulative effects of severe economic difficulties, continuing food insecurity. Especially vulnerable are 480,000 expectant and nursing mothers, 2.2 million children under five, and 2 million elderly people who are unable to cope with household food insecurity. A significant proportion of the population of 22.27 million suffers from crosscutting vulnerability caused by insufficient access to the quantity and quality of food to ensure a healthy life. The situation is compounded by the low quality of essential health, water, and sanitation services."(74)*

Only by ensuring all North Koreans access to adequate food can the North Korean government observe its obligations to respect, protect and fulfil the right to food, and improve its observance of the right to life.

Amnesty International is also concerned that other violations of the right to life appear to be on the increase as a consequence of the famine.

### **6.3 Executions including public executions**

There are reports that people have executed in public for famine-related crimes such as stealing crops or livestock for food. There have also reportedly been executions of North Koreans repatriated from China who had crossed the border in search of food. Amnesty International opposes the death penalty in all instances as the ultimate cruel, inhuman and degrading punishment. As a State Party to the ICCPR the North Korean government is obliged to uphold Article 6(2) which states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."(75) Other UN safeguards stipulate this should not go beyond intentional crimes with lethal or other extremely grave consequences."(76) The Human Rights Committee has also determined that public executions are "incompatible with human dignity".(77)

*"Public executions were highest between 1996 and 1998 when the famine was at its peak. People were stealing the infrastructure of society such as electric lines, copper wires and selling it in China and in consumer markets. This was seen as damaging to society and so the government decided they had to punish people severely. People who slaughtered cows to eat were also severely punished. The government forbade this as cows were perceived as essential for farming and transportation (due to lack of energy resources), and not just as a food source. In 1997/8 during the height of the refugee flow to China, the North Korean authorities found that through the mass exodus, some North Koreans were contacting South Koreans. North Korean authorities were afraid that they would be influenced by these South Koreans, especially missionaries. The North Korean authorities feared that it would threaten the political and social fabric of North Korea. In some cases, the North Koreans who had been forcibly repatriated back from China were publicly executed."(78)*

Testimonies suggest that food shortages resulted in social disorder, and public executions were carried out "to educate the people that disorder would be punished."(79) Notices of pending executions were reportedly advertised in public sites such as marketplaces. For instance, a witness testified that he saw public notices of executions near Hesan city in Yangang province when the famine was at its peak in 1996.(80) Testimonies also indicate that the North Korean government adopted a policy of increased numbers of public executions in the mid-1990s as the famine worsened.(81) One person told Amnesty International that, "after 1995, the authorities had to "intimidate" people so that they did not go to China and so they were shot in the head."(82)

Children were witness to these public executions. In some cases, school teachers reportedly took school groups to witness public executions.

Most of the North Korean children Amnesty International interviewed in South Korea had witnessed executions during the years of famine in the late 1990s. They reported seeing executions by hanging or by shooting. When there were executions in the market place, all shops were ordered to be closed. After the executions, the shops opened again. Sometimes the people to be executed were badly beaten before the execution. Men and women were executed for crimes including theft of cows and in one case for the murder of a policeman during a bungled attempt to steal corn.

One boy witnessed public executions twice in Hoeryong (North Hamgyong Province) at a market place in 1997. One of the accused was executed for the "crime" of killing a cow.

Another boy stated that in 1996 when he was in the third grade, his school teacher had taken students to see a person executed for robbery. Two brothers whom he witnessed being executed had killed a party member while trying to steal corn.

Another boy witnessed an execution in Musan (North Hamgyong Province), with other schoolchildren. He saw the execution of a man - who was in his thirties - on charges of stealing cows.(83)

According to testimonies collected by Amnesty International, "Teachers were seen bringing school groups to witness executions."(84) The exposure of children to the brutal act of execution appears to indicate that the North Korean government is not observing Article 19 of the Convention on the Rights of the Child which states that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

Amnesty International has received reports that indicate that public executions have declined since the time of these testimonies, but there is concern that executions are still taking place secretly in detention centres. There are vaguely defined provisions in the North Korean Criminal Code that provide for the death penalty. In concluding observations on the second periodic report submitted by the North Korean government on the implementation of the ICCPR, the UN Human Rights Committee remained "seriously concerned that, of those five offences (which carried the death

penalty)... four are essentially political offences (arts. 44, 45, 47 and 52 of the Criminal Code), couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria." The Committee also recommended that North Korea "should refrain from any public executions" and invited the North Korean government "to work towards the declared goal of abolishing capital punishment."(85) More recently, the UN Commission on Human Rights expressed its deep concern about reports of systemic, widespread and grave violations of human rights in North Korea, including: "(t)orture and other cruel, inhuman or degrading treatment or punishment, public executions, imposition of the death penalty for political reasons..."(86)

#### **6.4 The impact of famine and food crisis on children**

The lack of access to food has had the greatest impact on children. Between 1993 and 1997, infant mortality in North Korea reportedly increased from 45 per thousand in 1990 to 58 per thousand in 1999.(87) The North Korean government admitted in its second periodic report submitted in May 2002 to the Committee for Economic, Social and Cultural Rights that it increased from 27 per thousand in 1993 to 48 per thousand in 1999.(88) According to various reports, including North Korea's reports of 2002 to various international organizations such as the World Health Organization, UNICEF and the International Federation of Red Cross Societies, over 60 per cent of North Korean children under the age of five suffer from acute respiratory infections and over 20 percent from diarrhoea.(89) The rate of death from these diseases reached almost 80 percent. Some 40-50 percent of children visiting clinics were suffering from diseases caused by contaminated water, and during the monsoon season the rate shot up to 60-70 per cent.

At a hearing in May 1998, the UN Committee on the Rights of the Child considered the initial report submitted by the North Korean government, in compliance with its obligations under the Convention on the Rights of the Child. The Committee stated that it was "very concerned by the increase in the child mortality rate resulting from malnutrition that affects the most vulnerable children, resulting mainly from shortages of food, medicine and clean water."(90) In its recommendations, the Committee urged North Korea "to continue to prevent and combat malnutrition in children with all appropriate measures, through budgetary allocations in favour of children to the maximum extent of available resources and, where needed, within the framework of international cooperation."(91)

One of the major targets of food aid distribution by the WFP has been children, and it has directed aid to institutions such as schools, pediatric hospitals and children's homes. This appears to have contributed to a considerable improvement in the nutrition level of North Korean children. According to a 2002 survey(92), the ratio of under-weight children was 20.1 percent, which was a significant improvement over the ratio in 1998 when it was 60.6 percent.(93) There were also measurable improvements in the proportion of children suffering from acute malnutrition, or "wasting" (severe under-weight compared to height), and from stunting (chronic malnutrition).

Despite this evidence of improved nutritional levels, a FAO/WFP Special Report issued in October 2003 warns that malnutrition rates remain "alarmingly high" as 42 percent of children continued to suffer from chronic malnutrition.

*"The ratio of malnutrition of North Korean children is still too high compared to the standards set by the World Health Organization (WHO), and the ratio of children with chronic malnutrition is extremely high."*

The impact of long-term food deprivation is visible everywhere. A telling figure is a comparison between a seven-year old boy in the South (South Korea) and one in the North (North Korea). In South Korea he is 125 cm tall and weighs 26 kilos; his brother in the North is 20 cm shorter and 10 kilos lighter.(94)

The UN Commission on Human Rights in April 2003 expressed:

*"deep concerns at the precarious humanitarian situation in the country, in particular the prevalence of infant malnutrition which, despite recent progress, still affects a significant percentage of children and their physical and mental development."(95)*

These persistent concerns reveal that the North Korean government is not adequately fulfilling its obligations as a state party to the UN Convention on the Rights of the Child. In this regard, Article 24 of this Convention requires that state parties recognize "the right of the child to the enjoyment of the highest standard of health and to facilities for the treatment of illness and rehabilitation of health." In pursuit of full implementation of this right, states parties "shall take appropriate measures" to "combat disease and malnutrition - through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution."(96)

The Committee on the Rights of the Child noted its concern "at the lack of a specific mechanism to monitor progress in all areas covered by the Convention and in relation to all groups of children especially the most vulnerable ones, in urban and rural areas."(97) The Committee made a series of recommendations to the government, including "ratifying major international human rights treaties to which it is not yet a party, such as the International Convention on the Elimination of All Forms of Racial Discrimination - and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as they all have an impact on the rights of the child."(98)

Food shortages and adult deaths have had a severe impact on children. Unconfirmed reports suggest that hundreds of orphans have been placed in institutions or have become street children without access to food aid and state protection.

Some children manage to cross the border into China in search of food, where they continue to be undernourished and to lack protection. One of the boys Amnesty International interviewed said that he had been in China for four years. For two and half years, he was with his parents, but following their arrest he was on his own for one and half years. Children apprehended by border guards are reportedly returned to North Korea and housed in institutions where conditions are poor. Children from separated families are reportedly detained in juvenile detention centres, which, like

other detention centres, are overcrowded, with little access to medical facilities, and detainees apparently suffer from worse malnutrition than those outside.

## **6.5 The impact of famine and food crisis on women**

According to the UN Special Rapporteur on the right to food, "One of the main obstacles to the realization of the right to food is the social, economic and political discrimination experienced by women in many societies. Women and girls are often among the first to suffer from famine and chronic malnutrition. But it is also they who pass on the mutilations of malnutrition from one generation to the next. The so-called "life-cycle" analytical method or approach gives a more accurate view of the role played by women. For example, in North Korea, the famine of the 1990s destroyed between 12 and 15 per cent of the total population. However, the social damage was much higher if one considers the fall-off in the fertility curve caused by famine."(99)

Following the onset of acute food shortages and the decline of the PDS system, women have found it increasingly difficult to find food and other daily necessities for their families. Consequently, women have also been driven to roam the countryside in search of these necessities, and cases of women crossing the border with China have rapidly mounted.(100)

Information received by Amnesty International indicates that a growing number of women have been forced to turn to prostitution to feed themselves and their hungry families. Amnesty International has also documented an increase in the number of North Korean women being trafficked to China by Chinese bride traffickers where they are sold on to ethnic Korean farmers of Chinese nationality who have difficulty finding wives.(101) Whatever their circumstances, all North Koreans who enter China "illegally" face the risk of being pursued and apprehended by Chinese security officials and the North Korean Public Security Service (PSS). There have been numerous uncorroborated reports of extreme penalties, including forced abortion and infanticide, being imposed by North Korean authorities on women forcibly returned to North Korea. Penalties are allegedly most severe for those women who have become pregnant by Chinese men. Amnesty International is not able to verify these reports. However, given the North Korean government's refusal to allow regular interaction between North Korean citizens and foreigners and the intense social stigma attached to illegitimacy, it is more than likely that single mothers forcibly repatriated from China face very difficult times.(102)

In China, sexual exploitation is reportedly "an ever-present hazard for single North Korean women, especially for those living in isolated mountain areas, as they live communally, with large groups of men, without benefit of the protection of family or of a local community."(103)

Women who have been detained in North Korea, especially those who have been forcibly returned from China, continue to face torture or cruel, inhuman and degrading treatment, according to witness testimonies.

According to 52 year old Lee who was forcibly repatriated in April 2000, "*When I was interrogated, my body was searched for money at Musan. I had to remove my*

*clothes, stand against the wall; had to stand and sit 100 times; my vagina and hair were also 'searched to force money out'. Also inspectors searched my clothes."*(104)

54 year-old Chi was also detained after being forcibly repatriated from China in late 1999. *"I was asked initially to remove all my clothes; a female guard used medical gloves and put her hands in my vagina to see if I had money hidden away. During pre-trial detention, I was humiliated, abused. The guards - who were all men - touched my sexual organs, breasts with brooms. All the guards during the pre-trial detention period were male. I was alone when I was interrogated. I was beaten for speaking up as were others."*(105)

Testimonies indicate that women inmates in labour camps were forced to work long hours in brick factories and in farms. They were beaten if the guards felt that they had not worked hard enough.

According to Cho, who was forcibly repatriated to North Korea in September 1999, *"at the Chongjin labour camp (Chongjin chikwolsu nodonghwaso), I worked in a brick factory; I was also mobilised to work in a farm which grew Chinese cabbage and radishes. Those caught hiding (stealing) vegetables had to beat each other and if they did not beat hard enough, they were beaten by the SSA. We worked from 5am to 10pm, even pregnant women."*(106)

Former inmates report that the harsh conditions are made worse by lack of adequate facilities for female inmates. According to Kim and Cho, no sanitary products were available for their menstrual periods, so they tore up their own clothes. Kim said that she "did not have periods for ten months because of stress and malnutrition."(107) Chi added that there was not enough time provided for cleaning menstrual cloths.

General Recommendation 19, issued by the Committee on the Elimination of All Forms of Discrimination against Women, recommends that "States Parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act."

## **6.6 The consequences of fleeing from famine and food crisis: North Koreans in China**

The North Korean law which prohibits unauthorized departure is in clear breach of the fundamental right to leave one's own country. Article 12 (2) of the ICCPR, to which North Korea is a state party, states that "(e)veryone shall be free to leave any country, including his own."

North Koreans who "illegally" cross or help others in crossing the North Korean border face heavy penalties. Under Article 117 of the Criminal Code, a person who illegally crosses "a frontier of the Republic" faces a sentence of up to three years in a *kwalliso* (a political penal labour colony). Under Article 118 an official with the "frontier administration" who helps "someone to violate a frontier" faces a sentence in a *kwalliso* for a period of between two and seven years.

The acute food shortages in North Korea have forced tens of thousands of people to cross the border "illegally" into China's north-eastern provinces. According to NGOs,

journalists and aid workers who have visited the region, thousands of North Koreans are currently residing in border areas.

North Koreans residing "illegally" in China live in appalling conditions and are vulnerable to physical, emotional and sexual exploitation. Surveillance and checking for "illegal" North Koreans in China has intensified since 2001, after a number of incidents in which hundreds of North Koreans entered and occupied foreign embassies and consulates in order to seek shelter and asylum. The number of North Koreans in China has fallen considerably following the forcible repatriation of tens of thousands of North Koreans by the Chinese authorities since 2002.

A survey conducted by Johns Hopkins University(108) reported that most North Koreans in China came from the border province of North Hamgyong. The main reasons reported for this cross-border movement "were the extreme food deprivation and poverty facing the population of North Hamgyong as well as the (relatively) easy access to Yanbian Autonomous Korean Prefecture in China."(109) The North Korean authorities criminalize the act of leaving the country, and consider it a political offence, even though the motive for leaving the country may simply be one of survival.(110) This, together with the harsh punishments faced by those who are returned, would indicate that the vast majority of North Koreans in China would qualify as refugees under the 1951 Convention relating to the Status of Refugees (the Refugee Convention).

North Koreans in China are denied their right to seek and enjoy asylum from persecution. Although China is a party to the Refugee Convention, NGOs and other advocates for North Korean asylum-seekers in China say that it is virtually impossible for North Koreans to access refugee determination procedures with UNHCR, or be afforded protection as a group. According to several reports Amnesty International has received from NGOs and contacts in Japan, South Korea and the USA, China regularly returns North Koreans back to their country of origin without giving them the opportunity to make a claim for asylum. China also sends North Koreans back without making an objective and informed decision that they would be protected against serious human rights abuses in North Korea.(111) The Chinese government has also arrested and imprisoned NGO activists - most of whom are South Korean or Japanese nationals - and others who have been attempting to help North Koreans to leave China and reach South Korea.(112)

Seok Jae-hyon, a freelance photographer who worked regularly for The New York Times, was arrested on 18 January 2003 while filming North Koreans who were attempting to leave China on boats bound for South Korea and Japan. On 22 May, a court in Yantai, Shandong, sentenced him to two years in prison on charges of human trafficking. A South Korean aid worker, two Chinese nationals, and a North Korean who were allegedly aiding the North Koreans were also sentenced to two to seven years on similar charges. The appeal hearing, which was originally set for June, was postponed until mid-July and then further delayed without explanation. On 19 December 2003, a court in Shandong Province rejected an appeal filed by Seok Jae-hyon and upheld his two year sentence on charges of human trafficking. Seok Jae-hyon is reportedly the only foreign journalist currently in prison in China.(113)



Those individuals apprehended by Chinese border police and North Korean authorities in China are reportedly detained in China for several days and then forcibly returned to their country where they are at risk of punishment including arbitrary detention, forced labour, and in some cases, the death penalty for leaving the country without authorization. The Chinese government has repeatedly stated that it considers North Koreans in China not refugees but "economic migrants."

There appear to be several factors that influence the severity of the punishment meted out to North Koreans who have been forcibly repatriated from China. After the interrogation, "depending on the number of times the person had been in China, depending on their background (if the person had been serving in the military or was a government official, then the interrogation and sentencing appear to be more severe) and if the authorities have been convinced that the detainees are not 'politically dangerous', they are sent to a village unit labour camp, where they spend between three months and three years in forced labour. Those who are classified as 'political offenders' are sent to more severe camps; sometimes individually detained, sometimes the entire family."(114)

When the individuals who had been forcibly repatriated and then detained return home, they face ostracism from their community and increased surveillance from the authorities.

*"After I was released from detention, a party worker always watched me. Malnutrition continued. The food shortage compelled me to go to China. I had to choose whether to live or die; I wanted to live and so decided to leave North Korea."(115)*

Another North Korean told Amnesty International,

*"When I was released from prison, I was totally isolated from neighbours and friends. The social isolation upset my record for life. I feared that my blemished record would block any prospects for my son."(116)*

Some of the forcibly repatriated, particularly women, said that after they were released from detention, they could not find their families, especially their children. In many cases, not all the members of a family or group are caught and forcibly repatriated. Once they have been released from detention, many North Koreans decide to return to China and are caught in a vicious cycle of escape, apprehension and repatriation.

### **6.7 Torture and ill-treatment of North Koreans who have been forcibly repatriated**

North Koreans who have been forcibly repatriated from China are detained and interrogated in North Korean detention centres or police stations. These are operated either by the National Security Agency (also known as the National Security Police) (*kukka bouei bu*) or the People's Safety Agency (known as the police) (*inmin boan song*) or sometimes by both. After being forcibly repatriated from China, they are searched and interrogated by the National Security Police and/or the police.

Kim, who was forcibly repatriated to North Korea in October 1998 along with her husband by Chinese authorities, told Amnesty International that her husband died while he was in detention. *"My husband was tortured in the next room to where I was interrogated; he was handcuffed and beaten by a stick. It appears that he confessed to plans (that we were going to South Korea). I heard that he could not walk, that all his teeth had gone; he died in November 1998. I never saw him again. I found out about my husband's death only in February 2000 when I was transferred to a provincial detention facility (kukka boan bouibu) in Chongjin. I found out that my husband died of illness in Onsong Social Safety Agency (SSA or police) detention centre."*(117)

A former North Korean official told Amnesty International that *"When a detainee was not willing to talk, he was beaten by the use of fists; kept awake for several days and made to kneel for many hours. Political prisoners were detained in solitary confinement; for interrogation, they were taken to an interview room, shackled. Their hands were shackled even in the cell to prevent them from committing suicide."*(118)

If prisoners were caught communicating they were beaten with wooden sticks or iron bars. After the beatings, cold water was reportedly poured over the prisoners' bodies even in the middle of winter. Some prisoners were subjected to "water torture", where they were tied up and forced to drink large quantities of water. Information available to Amnesty International suggests that beatings are common during interrogations of North Koreans forcibly repatriated from China. It appears that many North Koreans do not realize that being beaten by the police is a human rights violation. However, such beatings are prohibited under Article 7 of the ICCPR, which states that "(n)o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The Human Rights Committee's General Comment 20 on the implementation of Article 7 states that:

*"It is important for the discouragement of violations under article 7 (of the ICCPR) that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment. The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure."*

The treatment of Kim (mentioned below) appears to be typical amongst women repatriated from China.

Kim, who was repatriated in 2001, also suffered arbitrary interrogation and torture after she was forcibly returned to North Korea from China. *"I was caught in August 2001 in China. Right after my arrest, I was sent to a Chinese police station, then a Chinese detention centre for seven days; later I was transferred to the border police for three days (interrogated by patrol (border) police for one day); the National Security Police then detained me for 10 days for interrogation; I was then sent to a labour training camp for 15 days. I was finally detained in a detention centre in Chongjin for three months. At the border patrol detention centre, I was asked how long I had stayed in China; if I had met South Koreans or church people; I was*

*undressed and completely checked, even my vagina was checked by one person to see if I had hidden any money."*(119)

Forcibly returned North Koreans are subjected to lengthy interrogations to find out who they have met whilst outside the country.

According to Cho, *"For a week, I was interrogated by the National Security Police; their main interest was if I had met with any South Korean. I was also questioned on what sort of people I met."*(120) Most North Koreans deny any contact with South Koreans; the punishment for such contacts is long-term imprisonment with hard labour or even execution.

## **6.8 Food shortages and appalling conditions in detention centres and prisons**

Long-term food shortages have been a significant factor in the worsening conditions in detention centres and prisons.

Kim, who was forcibly repatriated from China in 1997-8, testified that he had seen people die of hunger while in detention. He also described the terrible detention conditions. *"The police (People's Safety Agency) interrogation/detention facility where I was detained and interrogated was often overcrowded. Most of the detainees had been caught in China and repatriated back. The detention cells had bars on both sides, so we could be seen from all sides. There were no windows. We had to sit still with our heads lowered without moving from 5 am to 11.30pm. Toilet conditions were awful; there were no facilities for women's needs. Detainees were given the tasks of carrying toilet or people's faeces with their hands; but no soap was given to cleanse the hands. Food consisted of potato skins and beans; and soup with bits of pumpkins, there was no salt and this meal was given three times a day. If detainees were spotted talking, meals were withdrawn as punishment. People were half-dead when released. I thought I would die. I saw people die of malnutrition; I saw a body being taken away. The main direct cause of death was malnutrition."*(121)

Lee emphasized that most of his fellow detainees were victims of acute food shortages: *"When I was in Hoeryong detention centre in 1997 for three months, I found that most of those criminalized were for economic reasons. I had heard that some people had killed and eaten cows from collective farms, or sold copper and wires and some were involved in robberies. Most men were saying that if the government had given sufficient food, there would have been no problems. The shortage of food was the most serious problem faced by detainees; I counted how many pieces of corn had been served in the soup - there were 80 kernels of corn for one meal. I saw an inmate dying of malnutrition. I saw a 15/16 year old boy die; the boy was there as he had sold glass from his school. After 15 days' detention, the boy died; he had been unable to eat the food beside him because of malnutrition. There was so little food."*(122)

Most of the North Koreans who testified to Amnesty International had been detained in North Korean detention facilities and prisons, which they reported were severely overcrowded. One of the former detainees said that due to overcrowding(123) there were as many as nine to 12 detainees in a room which was approximately 15 *pyong* in

size (1 *pyong*= 2x4 sq. ft). So when the detainees slept, they had to huddle and sleep in rows cramped together.

Most of the former detainees said that the main problem in detention centres was the lack of food, which they attributed to the famine or food crisis. While some detainees mentioned that they were given 80 kernels of corn for every meal three times a day, some other were only given three to four spoons of corn-meal mixed in a small bowl of hot water three times a day. (124)

Former detainees' testimonies indicate that there was poor hygiene and inadequate health care in detention centres and prisons. One former detainee told Amnesty International that there were no doctors in some detention centres.(125) Deaths from malnutrition and infectious diseases are high - even for people who receive light sentences. Therefore many North Koreans view forced repatriation from China as a death sentence regardless of whether they are classed as "political offenders" or given a "light" sentence. According to Lee, repatriation meant death; "detainees did not die of torture alone, but a combination of malnutrition and torture."(126)

Food shortages also resulted in deaths from malnutrition in political penal labour colonies or "control and management places" (*kwallisos*).

According to Kim, who spent four years at Yodok *kwalliso* on charges of treason after being repatriated from China, "*Malnourishment made life in Yodok very difficult. We were given corn-rice in small quantities; at times we got only salt soup with cabbage leaves. No meat was served. We were always hungry; and resorted to eating grass in spring. Three or four people died of malnutrition. When someone died, fellow prisoners delayed reporting his death to the authorities so that they could eat his allocated breakfast.*"(127)

The prison regime included further reductions in food if detainees were charged with breaking prison rules.

Kim reported that the punishment regime in labour training camps included denial of food. According to her, "*Those who tried to escape were beaten, sometimes escapees were shot. This punishment was not restricted only to the person who tried to escape, but also to the whole group who were punished by withdrawal of food or given heavier labour.*"(128)

A state's denial of access to food to particular individuals or groups "whether the discrimination is based on legislation or is pro-active" is seen as a violation of the right to food under Article 11 of the ICESCR.(129) Article 20(1) of the Standard Minimum Rules for the Treatment of Prisoners (SMR), also states that, "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."

The UN Human Rights Committee stated in 2001 that it remained "concerned about the many allegations of cruel, inhuman and degrading treatment and conditions and of inadequate medical care in reform institutions, prisons and prison camps, which

appear to be in violation of articles 7 and 10 of the Covenant [ICCPR] and of the SMR." The Committee recommended to the North Korean government that it

*"should take steps to improve conditions in the facilities (reform institutions, prisons and prison camps) and all other facilities for detention in the Democratic People's Republic of Korea. It must ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person, as required by article 10 of the Covenant. The State Party must ensure that sufficient food and appropriate and timely medical care are available to all detainees. The Committee strongly recommended that the State Party allow for independent internal and international inspection of prisons, reform institutions and other places of detention or imprisonment."(130)*

### **6.9 A case for continuation of aid**

North Korea is an isolated country facing acute food shortages. Because of the precarious state of its economy and exclusion from international financial institutions, it is not in a position to import food to meet its substantial food shortfall and therefore depends on food aid from the international community. Despite improved harvests, the WFP states that nearly 6.5 million people (a third of the population) - mainly women and children - will require food assistance in 2004. More than four out of every ten children in North Korea suffer from "chronic malnutrition". A third of mothers have been found to be malnourished and anaemic. The international community must continue giving food aid, while ensuring that the aid reaches its intended beneficiaries, it should not use food aid as a political tool.

North Korea has been the recipient of some eight million tons of food aid since 1995; almost half of which has been distributed by the WFP. According to WFP findings, there have been discernable improvements:

- the proportion of underweight children has fallen from 61 percent in 1998 to 21 percent in 2002;
- there has been a reduction in "wasting" (acute malnutrition) from 16 percent in 1998 to 9 percent in 2002 and
- stunting or chronic malnutrition has declined from 62 percent of children in 1998 to 42 percent in 2002.

Food aid from the international community has played an important role in bringing about these improvements, helping the North Korean government to protect the right to life of its citizens. The food aid appears to have brought about a decline in the number of North Korean fatalities due to malnutrition.

However, the crisis is not over yet and the country continues to need supplies of food and medicines. Otherwise, malnutrition rates could rise again and the humanitarian crisis could worsen. According to UN Office for the Coordination of Humanitarian Affairs (OCHA) report on 8 December 2003, the 2003 Consolidated Appeal for humanitarian assistance for North Korea received just over half the funds requested, leaving up to three million food aid beneficiaries with inadequate aid in 2003.(131) In November, the WFP had to stop cereal distributions to 700,000 elderly people. There was concern that unless new pledges were confirmed, cereal shortfalls could affect up

to 3.8 million people countrywide. There was concern that cereal shortfalls could affect 2.2 million beneficiaries on the west coast of the country, including young children and pregnant and nursing women. If the international community did not make new pledges, the OCHA expressed concern that cereal shortages could affect 3.8 million people countrywide by May 2004.

## **7. Conclusion**

Amnesty International believes that the right to food is at the core of the many human rights problems faced by the North Korean people. To date, the North Korean government has failed in its duty to uphold and protect this right, and indeed its actions have exacerbated the effects of the famine and food crisis. Efforts by the international community to assist in the provision of food have been undermined by the North Korean government's refusal to allow swift and equitable distribution of this food and by the government's continuing restrictions on freedom of information. International donors are less inclined to shoulder their share of the responsibility to ensure that North Korean people can enjoy their right to food, because the North Korean government has failed to carry out its duties, and to work in partnership with others to secure the rights of its people. Political priorities have been placed above fundamental human rights, and across North Korea, ordinary people have suffered - and continue to suffer - the consequences.

Amnesty International believes that the right of the North Korean people to be free from hunger can be upheld, if immediate steps are taken by the North Korean government and the international community. The recommendations below would - if implemented - bring about a marked improvement in the situation of the North Korean people. The organization urges the North Korean government and the international community to implement these recommendations without delay, and alleviate the suffering of the North Korean people, who have been hungry for food for too long.

### **Recommendations to the North Korean government**

#### ***The North Korean government should:***

- Ensure that food shortages are not used as a tool to persecute perceived political opponents and that there is no discrimination in the distribution of food aid.
- Allow greater scrutiny of its human rights policies and practices, including allowing unrestricted access to independent monitors and transparency and openness in the distribution of food aid.
- Ensure that humanitarian organizations, in particular UN agencies, have free and unimpeded access to all parts of North Korea in order for them to ensure that humanitarian assistance is delivered impartially on the basis of need, in accordance with humanitarian principles.
- Respect, protect and fulfil the right to food and strengthen adequate access to food in accordance with international standards to which North Korea is a state party. The North Korean government should *respect* the right to food by refraining from taking measures liable to deprive anyone of access to food; *fulfil* the right to food by facilitating access to food through activities intended to strengthen people's access to

and utilization of resources and means to ensure their livelihood and by providing food equitably and without discrimination for individuals or groups who are unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal.

- Introduce or amend laws and legal procedures to ensure that the right to food is justiciable and that people are able to seek a remedy if their right to food is violated. For instance, the North Korean government should adopt a "framework law as an important instrument to implement the national strategy concerning the right to food. The law should include provisions on its purpose, the means by which the purpose could be achieved, the institutional responsibility for the process and national mechanisms for its monitoring as well as possible recourse procedures".(132)
- Respect the right to freedom of movement for all North Koreans, especially to ensure that they have adequate access to food. The North Korean government should not punish individuals whose only crime is to try and feed their family. The North Korean government should, especially, refrain from punishing its citizens who have moved to other countries, in particular for humanitarian reasons, and refrain from treating their departure as criminal or even as treason leading to punishments of imprisonment, inhuman or degrading treatment or the death penalty.
- Stop all executions.
- Anyone imprisoned in North Korea for the non-violent exercise of his or her right to freedom of expression and association should be released immediately and unconditionally.
- Torture and ill-treatment should not be tolerated. Any official found responsible for torture should be brought to justice and victims should receive adequate compensation.
- Protect the rights of vulnerable groups such as women, including those held in detention centres or institutions, and ensure that no group faces discrimination in the distribution of food.
- Ensure that the rights of vulnerable groups such as children are protected and that no child faces discrimination in the distribution of food and medical care.
- Respect the right of access to information - including by allowing independent news media to publish and broadcast and by granting free and unimpeded access to media outlets - so that ordinary people are aware of the gravity of the food situation and of their human rights.
- Ratify human rights instruments to which North Korea is not yet a party, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Optional Protocols to the Convention against Torture; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (which allows individual complaints to the Committee and inquiries); and the First Optional Protocol to the International Covenant on Civil and Political Rights (individual complaints).
- Implement its obligations under the human rights instruments to which it is a party, namely the International Covenant on Economic, Social and Cultural Rights, in particular concerning the right of everyone to be free from hunger, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, ensuring that all necessary measures are undertaken to this end.
- Implement the recommendations of the Committee on the Rights of the Child, and the Human Rights Committee and the Committee on Economic, Social and Cultural

## Rights.

- Cooperate with the United Nations system in the field of human rights; in particular, cooperate without restriction or reservation with the thematic procedures of the Commission on Human Rights relevant to the situation of the Democratic People's Republic of Korea; especially the Working Group on Arbitrary Detention, as well as the Working Group on Enforced or Involuntary Disappearances, and international human rights organizations.
- Invite the Special Rapporteur on the right to food, in conjunction with the Special Rapporteur on torture and the Special Rapporteur on violence against women to visit North Korea and allow them unrestricted access.

## **Recommendations to the international community**

### ***The international community, including donor governments and the UN, should:***

- Provide food aid and humanitarian assistance to enable the North Korean government to fulfil its obligations to respect, protect and fulfil the right to food. Provision of humanitarian aid should be guided at all times by human rights considerations. Essential aid in times of food crisis should not be used by any government as a bargaining tool to further its political or economic interests.
- Urge the North Korean government to implement the above recommendations, particularly with regard to the questions of access, accountability and compliance with the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other international standards to which the North Korean government is state party.
- Ensure that human rights guarantees are included in all discussions with the North Korean government; there should be follow-up action to monitor any agreements relating to access, accountability and human rights.
- Ensure that both development and humanitarian aid policies are based on human rights principles including ensuring non-discrimination.
- Continue to urge the North Korean government to ensure that humanitarian assistance, especially food aid, destined for the people of North Korea is distributed without discrimination except in the case of the vulnerable sections of society and that representatives of international humanitarian agencies are allowed to travel throughout the country to monitor this distribution.
- Ensure that the Government of China respects its obligations under international law, including respecting the fundamental principle of *non-refoulement*. The UNHCR and the international community should urge the Chinese government to fulfill its obligations under the 1951 Convention relating to the Status of Refugees, including respect for the right of North Koreans to seek and enjoy asylum.

### ***The Government of China should:***

- Respect its obligations under international human rights and refugee law. This includes protecting the fundamental human rights of all North Koreans on its territory. In particular, asylum-seekers should have access to a fair, satisfactory and individual refugee status determination procedure. North Korean asylum-seekers should be given access to the UNHCR so that their claims for protection can be independently and impartially assessed. Persons found to be refugees under a fair and satisfactory procedure should have access to effective respect for their fundamental human rights, including their economic, social and cultural rights;



· In accordance with the customary norm of *non-refoulement* and its obligations under the Convention against Torture and the Refugee Convention, the Chinese government should not forcibly return any North Korean to North Korea who may be subject to serious human rights abuses, including imprisonment as a prisoner of conscience, torture, execution or other punishment inflicted for leaving the country without authorization.

***The government of South Korea should:***

· Endeavour to protect the rights of all North Koreans in China who apply for resettlement in South Korea.

**To inter-governmental agencies and non-governmental aid organizations**

***All aid organizations - governmental, inter- governmental and non governmental should:***

- Mainstream human rights in the development of their policies and practices.
- Urge the North Korean government to stop discrimination in its aid distribution; especially against vulnerable sections of North Korean society.
- Urge the North Korean government to be more transparent and to allow access to independent monitors, especially in the distribution of food aid.
- Urge the North Korean government to uphold the full range of human rights.

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(1) E/CN.4/2003/54, p.51, paragraph 58, Report of the Special Rapporteur on the right to food.

(2) HRI/GEN/1/Rev.4, p.57, paragraph 1, General Comment no.12.

(3) North Korea is also expected to observe other related international standards such as the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104 of 20 December 1993).

(4) The Human Rights Committee expressed similar concerns in its concluding observations in July 2001, CCPR/CO/PRK, paragraph 8.

(5) Mary Robinson, "The Right to Food: Achievements and Challenges", Report submitted to the World Food Summit: Five Years Later, Rome, Italy, 8-10 June 2002.

(6) UN Document E/C.12/1999/S (12 May 1999).

(7) E/CN.4/2003/54, paragraph 23, 10 January 2003.

(8) Alternatively, academic Henry Shue has usefully formulated states obligations as "1) Duties not to eliminate a person's only available means of subsistence - duties to avoid depriving. 2) Duties to protect people against deprivation of the only available

means of subsistence by other people - duties to protect from deprivation. 3) Duties to provide for the subsistence of those unable to provide for their own - duties to aid the deprived." as quoted by Angela Wong, "The right to food," in "Article 2" (Asian Legal Resource Centre (ALRC)), v.2, n.2, April 2003, p.13-14.

(9) This proposition has been further affirmed by the Commission on Human Rights in its resolution 2000/10 on the right to food.

(10) HRI/GEN/1/Rev.4, p.85, paragraph 2.

(11) North Korean authorities inform their citizens that the famine was caused by natural disasters and foreign sanctions.

(12) Meredith Woo-Cumings, *The Political Ecology of Famine: The North Korean Catastrophe and Its Lessons*, Asian Development Bank Institute Research Paper 31, January 2002, p.24. Estimated per capita energy use in 1990 was more than twice that of China in the same year and similar to South Korea's.

(13) In 1990, North Korea's use of fertilizers per hectare of agricultural land was amongst the highest in the world. Heather Smith and Yiping Huang, "Achieving Food Security in North Korea," Paper prepared for Ladau Network/Centro di Cultura Scientifica A. Volta (LNCV) conference, Korean Peninsula: Enhancing Stability and International Dialogue, Rome, 19 November 2001, [www.mi.infn.it/~landnet/corea/proc/039.pdf](http://www.mi.infn.it/~landnet/corea/proc/039.pdf)

(14) Woo-Cumings, *ibid.* p.24

(15) J.Williams, D.von Hippel and P.Hayes (2000), "Fuel and Famine: Rural Energy Crisis in the Democratic People's Republic of Korea," Institute on Global Conflict and Cooperation Policy Paper No.46, March 2000, pp.9-10, [www-igcc.ucsd.edu/publications/policy--\\_papers/pp46.html](http://www-igcc.ucsd.edu/publications/policy--_papers/pp46.html)

(16) See J.Williams, D.von Hippel and P.Hayes (2000), *ibid.*, p.3.

(17) Nicholas Eberstadt, Marc Rubin and Albina Tretyakova, "The Collapse of Soviet and Russian Trade with the DPRK, 1989-1993: Impact and Implications," *The Korean Journal of National Unification*, 1995: 4, p. 97. In the same article, the authors have, by using "mirror statistics" issued by the Russian State Statistics Committee, calculated that Soviet trade subsidized North Korea by \$400 million between 1980 and 1990. This was in addition to the North Korean trade deficit between 1985 and 1990 which amounted to \$4 billion.

(18) FAO/WFP Mission Report, July 2001.

(19) Forecast by a joint FAO/WFP Crop and Food Supply Assessment Mission which visited North Korea in September/October 2002.

(20) WFP, "Emergency Operation DPR Korea NO. 10141.1: Emergency Assistance For Vulnerable Groups," p.1

(21) According to Asia Watch and Minnesota Lawyers International Human Rights Committee, "Human Rights in the Democratic People's Republic of Korea", December 1988, p.43, the ration reportedly varied according to one's classification. The lowest grade appeared to be people in prison, and in the eighties appeared to allow for less than 200 grams of grain per day.

(22) UNICEF press release, August 1997.

(23) However, according to WFP standards, this still only provides less than half a person's daily calorific requirements.

(24) Jasper Becker, *Hungry Ghosts*, 1998; Korea Buddhist Sharing Movement, "Survey of North Korean Refugees," 1997.

(25) Andrew Natsios, A.Natsios, "The Politics of Famine in North Korea," US Institute of Peace, Special Report 51, August 1999, pp 5-11.

(26) Andrew Natsios, *ibid.*

(27) Andrew Natsios, *ibid.*

(28) "North Korea still needs food aid, despite improved harvests", FAO Press Release, 25 November 1998 and "Special Report: FAO/WFP Crop and Food Supply Assessment Mission to the DPR Korea", November 1998.

(29) E/CN.4/2001/53, p.23, paragraph 78.

(30) According to a study by John Hopkins University, death rates in the 1995-97 period increased eightfold: from 0.55 percent in the 1993 census to an annual average of 4.3 percent from 1995 to 1997. W.C.Robinson, Lee Myung-ken, K.Hill and G.Burnham, "Rising Mortality in North Korean Households Reported by Migrants to China," *Lancet*, July 1999. Official North Korean Government figures show that average life expectancy decreased by six years from 73.2 in 1993 to 66.8 in 1999, which they attribute to shortage of food and medicine.

(31) E/CN.4/2001/53, p.23, paragraph 78.

(32) Source: Malnourishment of North Korean women, p.32 and anemic condition of North Korean women, p.34 of the Report on the DPRK Nutrition Assessment, UNICEF/WFP/Central Bureau of Statistics, DPRK)

(33) FAO/WFP, Special Report of the Crop and Food Supply Assessment Mission, October 2003, p.1.

(34) Source: Compiled from FAO/WFP DPRK Crop and Food Supply Assessment Mission Reports, OCHA, DPRK Humanitarian Situation Bulletins.

(35) Woo-Cummings, p.30.

(36) Babson quoted by Woo-Cummings, p.31.

(37) FAO/WFP Special Report October 2003, p.21.

(38) The October 2003 FAO/WFP Special Report has calculated that a one-income earner household with two children would spend 65 percent of its monthly 2000 Won income to buy PDS cereals rations and would not have enough cash to buy supplementary cereals or nutritious food items in the consumer (informal) markets.

(39) Transition Times, 2003, quoting Oxford Analytica and news agencies

(40) FAO/WFP Special Report October 2003, p.21.

(41) The July 2002 Economic Reforms reportedly do not favour the so-called 'non-productive' urban dwellers, such as housewives, the elderly and those working in less productive industries. These groups have seen the free benefits they enjoyed under the old coupon system disappear and have watched the disparity widen between their income and standard of living, and those of their more 'productive' neighbours.

(42) A.Natsios, *ibid.* pp.5-11. The availability of food in farmers' markets in the northern and north-eastern provinces is still believed to be lower than the rest of the country.

(43) For more details of the classification of North Korean society, which by June 1970 was classified into three strata with 51 categories, see FIDH, *Misery and Terror: Systematic Violations of Economic, Social and Cultural Rights in North Korea*, FIDH Report No.374/2, November 2003, p.5.

(44) "North Korea: The Humanitarian Situation and Refugees," MSF Testimony Delivered by Sophie Delaunay, Regional Coordinator for North Korea, MSF, to the House Committee on International Relations Subcommittee on East Asia and the Pacific in Washington, D.C. May 2, 2002.

(45) FIDH, *Misery and Terror*, 2003, p.5.

(46) Testimony by Kim on 7 December 2002.

(47) Hazel Smith, "North Koreans in China: Defining the problems and offering some solutions" Unpublished Paper, December 2002, p.14

(48) E/C.12/1/Add.95, 28 November 2003, para 13.

(49) Article 2.2 of the ICESCR states that States Parties "undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

(50) L Gordon Flake, "The Experience of U.S. NGOs in North Korea," in Snyder and Flake, *Paved with Good Intentions: The NGO Experience in North Korea*, (2003), p. 21.

- (51) Second Periodic Report of the Democratic People's Republic of Korea on its implementation of the International Covenant on Civil and Political Rights, CCPR/C/PRK/2000/2, 4 May 2000
- (52) Testimony of Oh on 8 December 2002.
- (53) Testimony of Kim on 7 December 2002.
- (54) Andrew Natsios, "The Politics of Famine in North Korea, US Institute of Peace, Special Report 51, August 1999.
- (55) Following an administrative restructuring reportedly in 2001-2, North Korea is now divided into 206 counties.
- (56) Shim Jae Hoon, "North Korea: A Crack in The Wall", Far Eastern Economic Review, 29 April 1999.
- (57) ICESCR General Comment 3 (Fifth session, 1990): The Nature of States Parties Obligations, E/1991/23 (1990) 83, paragraph 10.
- (58) Ibid paragraph 13.
- (59) L. Gordon Flake in Snyder and Flake (2003), p.37.
- (60) On 30 September 1998, MSF officially announced its withdrawal from North Korea, on the grounds that North Korean authorities restricted the humanitarian activities of MSF doctors. The MSF Secretary General Dr Eric Goumart stated that North Korean authorities prevented doctors from approaching the inhabitants and refused to allow them to watch the process of distribution of medicine and medical supplies they provided to North Korea. (See Naewae Tongshin, Seoul, Daytime issue, (No.113), 15 October 1998.)
- (61) Oxfam withdrew its five-member team in December 1999 citing interference by North Korean authorities.
- (62) CARE pulled out of North Korea in June 2000 stating that the operational environment in North Korea - in areas such as access, transparency and accountability - had not reached a stage where the organization could implement effective rehabilitation programs. (CARE 2000)
- (63) Caritas assistance to North Korea between 1995 and 31 March 2001, excluding operational costs, amounted to US\$27.1 million.
- (64) Scott Snyder and L.Gordon Flake, p.40
- (65) The WFP has its main office in the country in Pyongyang, and five sub-offices located in Sinuiju, Wonsan, Hamhung, Chongjin and Hyesan. WFP has approximately 50 international staff, most of which are dedicated to programming and monitoring of food assistance. It has the largest geographical coverage of any international organization working in North Korea. The WFP has access to approximately "87% of

what is believed to be the country's total civilian population of 22.6 million." (Emergency Operation DPR Korea No.10141.1, p.9) in 163 out of 206 counties.

(66) Electronic communication from Ahmareen Karim, WFP DPR Korea Reports and Information Officer on 31 July 2003.

(67) FAO/WFP Special Report, October 2003, p 23-24.

(68) Quoted by Larry Kilman, "Free Press... a nation's health indicator," The Hindu, 3 May 2003.

(69) Testimony of Lee on 8 December 2002

(70) Testimony of Yoo on 7 December 2002

(71) Testimony of Cho on 8 December 2002

(72) "Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea," CCPR/CO/72/PR, 27/08/2001.

(73) E/CN.4/2001/53, p.4, paragraph 3.

(74) United Nations, Consolidated Inter-Agency Appeal 2003: Democratic People's Republic of Korea, November 2002

(75) UN Document No. E/CN.4/1997/60, 24 December 1996, Paragraph 91

(76) Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984

(77) CCPR/C/79/Add.65, 24 July 1996, paragraph 16 (1)

(78) Interview with Lee Sung-yong of the Seoul-based NGO, Good Friends - Centre for Peace, Human Rights & Refugees, on 4 December 2002.

(79) Testimony of Cho, on 8 December 2002.

(80) Testimony of Lee, on 3 December 2002

(81) Testimony of Kim, on 7 December 2002

(82) Testimony with Mr Y (name withheld) in December 2002.

(83) Testimonies on 3 December 2002

(84) Testimony of Lee, on 3 December 2002.

(85) Quotes from "Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea, 27/08/2001 (CCPR/CO/72/PRK), paragraph 13.

(86) UN Commission on Human Rights, *ibid.*

(87) The World Bank Group, *Poverty Reduction and Economic Management/Human Development/Development Economics*, May 2001, p.27, (<http://www.worldbank.org/poverty/data/trends/social.pdf>).

(88) E/1990/6/Add.35, Table 6, p.21.

(89) Center for Children Medicine Support Inc., *Symposium on the Health Conditions of North Korean Children* Seoul: Sejong Cultural Center, 14 November 2002

(90) Concluding observations of the Committee on the Rights of the Child: Democratic People's Republic of Korea. 05/06/98. CRC/C/15/Add.88 (Concluding Observations/Comments), p.2.

(91) *Ibid.*, p.3.

(92) The conclusions form part of a nutrition survey jointly conducted by the UNICEF, the WFP and the North Korean government. This joint effort surveyed 6,000 mothers and their children under the age of 7 randomly selected from 10 out of 12 cities and provinces. (Central Bureau of Statistics, "Report on the DPRK Nutrition Assessment, 2002," (Pyongyang, DPRK, 20 November, 2002)).

(93) According to the European Union/UNICEF/WFP, *Nutrition Survey of the Democratic People's Republic of Korea*, New York: UNICEF, 1998, which did a nutritional survey of 1,762 randomly selected children aged six months to 7 years, 15.6 percent of children were found to be wasted (weight for height), 62.3 percent were stunted (height for age) and 60.6 percent were moderately or severely underweight (weight for age). In the much larger 2002 Nutrition Survey which surveyed 6,000 children of the same age range, 8.12 percent of the children were found to be wasted, 39.22 percent were stunted and 20.15 percent were underweight. It must be noted that the two surveys are not exactly comparable, as the 1998 Nutrition Survey covered a smaller grouping but it does give a broad idea of the changes in nutrition levels of children in North Korea

(94) Kathi Zellweger quoting Nicholas Ebestadt in her speech, "Caritas in North Korea - For Human Dignity and Justice," 31 May 2003.

(95) UN Commission on Human Rights Decision, *Situation of human rights in the Democratic People's Republic of Korea* (E/CN.4/2003/L.11, 2003/10, 16 April 2003).

(96) Article 24 (2 c) of the UN Convention on the Rights of the Child.

(97) Concluding observations of the Committee on the Rights of the Child: Democratic People's Republic of Korea. 05/06/98. CRC/C/15/Add.88 (Concluding Observations/Comments), p.2.

(98) *Ibid.*, p.3.

(99) E/CN.4/2001/53, p.23, paragraph 78.

- (100) Korea Institute for National Unification (KINU), "White Paper on Human Rights in North Korea 2003, Seoul: Korea Institute for National Unification, 2003, p.172
- (101) Amnesty International, "Democratic People's Republic of Korea: Persecuting the starving: The Plight of North Koreans fleeing to China," (ASA24/003/00), pp.6-7.
- (102) Hazel Smith, "North Koreans in China: Defining the problems and offering some solutions," Unpublished paper, December 2002, p.7.
- (103) Hazel Smith, *ibid.*, p.14
- (104) Testimony of Lee to Amnesty International on 8 December 2002
- (105) Testimony of Chi to Amnesty International on 3 December 2002
- (106) Testimony of Cho to Amnesty International on 8 December 2002.
- (107) Testimony of Kim to Amnesty International on 7 December 2002.
- (108) The Johns Hopkins University study involved 440 North Koreans in China in 1998 and its findings were published in *Lancet*, July 1999; see footnote 17, p.8 above.
- (109) Hazel Smith, "North Koreans in China: Defining the problems and offering some solutions," 2002, p.9.
- (110) The criminalization of the act of leaving the country would be one indicator of this fact.
- (111) Since heavy international media coverage of North Koreans who managed to occupy foreign embassies and international schools in China, the Chinese government has allowed these small groups to leave for South Korea via a third country.
- (112) Under the South Korean Constitution, all North Koreans are entitled to South Korean citizenship.
- (113) Committee to Protect Journalists, Chinese Court Rejects South Korean Photographer's Appeal: Journalist to remain jailed, 23 December 2003.
- (114) Lee Sung-yong, Good Friends - Centre for Peace, Human Rights & Refugees , 4 December 2002
- (115) Testimony of Lee on 3 December 2002
- (116) Testimony of Chi on 3 December 2002
- (117) Testimony of Kim to Amnesty International on 7 December 2002.
- (118) Testimony from Y, a former agent of the National Security Police or State Protection Agency (Kukka Poan Poibu).



- (119) Testimony of Kim to Amnesty International on 7 December 2002
- (120) Testimony of Choi to Amnesty International on 7 December 2002
- (121) Testimony of Kim to Amnesty International on 7 December 2002
- (122) Testimony of Lee to Amnesty International on 3 December 2002.
- (123) At Onsong-gun SSA detention centre, there were reportedly 150 detainees, in facilities built for 40-50.
- (124) Testimony of Cho to Amnesty International on 8 December 2002.
- (125) If someone was seriously ill, then s/he was taken to a hospital outside. When hospitalized, one or two guards were sent to hospital, so they tried not to send people to hospital. (Testimony by Kim to Amnesty International on 2 December 2002)
- (126) Testimony of Lee to Amnesty International on 3 December 2002
- (127) Testimony of Kim to Amnesty International on 2 December 2002
- (128) Testimony of Kim to Amnesty International on 7 December 2002
- (129) ICESCR General Comment 12, Paragraph 19.
- (130) Concluding Observations of the Human Right Committee, July 2001
- (131) According to information from the WFP, the Emergency Operation Appeals were fully resourced by donors between the years 1995 and 2001; however, there has been a substantial decline in donor commitments in 2002 and 2003. In 2002, in response to an appeal for 611,000 tons of food assistance, only 375,000 tons were received; in 2003, in response to an appeal for 511,000 tons of food assistance, only 300,000 tons were received.
- (132) See General Comment 12 of the ICESCR, (HRI/GEN/1/Rev.4, pp.62-63, paragraph 29).